

DRAFT

STATINTL

MEMORANDUM FOR: Mr. [REDACTED]  
FROM : Frank C. Carlucci  
Deputy Director of Central Intelligence  
SUBJECT : Grievance

1. This replies to your memorandum of 27 October 1977, claiming promotion from GS-15 to GS-16 retroactive to 10 May 1976. This is one year after you were assigned to the GS-16 position of Deputy Chief,

STATINTL

[REDACTED], Office of Communications (OC).

You stated that as of December 1977 you would have been assigned to a GS-16 position for over 31 months; that your performance was rated outstanding in 1976 and 1977; and that, had the existing situation of personal rank assignments not been allowed to extend beyond reasonable time limits, you would have been promoted no later than mid-1976. In brief, you felt you had been treated unfairly, because "the promotion headroom associated with the position to which I was assigned had been used to offset the promotion of someone serving in a lesser graded position," depriving you of salary and annuity benefits.

2. Your grievance was referred to the Inspector General. He has made findings and reached conclusions in which I concur. First, for general background purposes:

-- Headquarters Regulation [REDACTED] governs the promotion to STATINTL supergrade rank. It provides, among other things, that the Director of Central Intelligence (DCI), with the approval of the Office of Management and Budget, establishes the supergrade ceiling of the Agency; the DCI determines allocation of the ceiling to the directorates upon recommendations of the Agency Supergrade Board; the DCI is responsible for approving promotions to supergrade rank; the Deputy Directors forward requests for such promotions, through the Director of Personnel, to the DCI.

-- The Personnel Management Handbook of the Deputy Director for Administration (DDA) provides that supergrade promotions are initiated by office heads and reviewed by the Senior Personnel Resources Board (SPRB), composed of the Associate DDA, the various office directors and an executive secretary. SPRB makes recommendations to the DDA, who has final authority on recommending supergrade promotions to the DCI. The stipulated criteria for promotion are "quality of performance" and "demonstrated ability to perform at a higher level." Competitive evaluation, the ranking of individuals against their peers, determines who is recommended for promotion. The competition occurs in three, progressively more challenging contexts--first within an office, then within the directorate, finally Agency-wide.

3. The Office of Communications submitted your name to SPRB for promotion in March and September 1976. Your rank in those submissions

by OC was 6th of 6 candidates in March, 4th of 4 in September. As far as relative ranking of several individuals from the same office is concerned, the SPRB follows the recommendation of the appropriate office director. However, where the specific individuals appear within the overall list is determined by a vote of the office directors and the chairman. The latter vote in both instances ranked you too low in the directorate-wide competition to be recommended for promotion.

4. Several factors appear to explain your relatively low ranking in the 1976 competition. For example, although you received the rating of outstanding on your specific major duty in [REDACTED] you were not rated <sup>STATINTL</sup> outstanding overall. Likewise, your promotion to GS-15 occurred in July 1974, and your advancement to Deputy Chief, [REDACTED] in May 1975; <sup>STATINTL</sup> time-in-grade is one of the factors <sup>(normally)</sup> routinely considered in promotion considerations, as is the duration of "demonstrated ability to perform at a higher level." My conclusion is that neither the quality of your performance nor its duration was sufficient on a comparative basis to win promotion in 1976, although your competitive position strengthened considerably in 1977.

5. Returning to your grievance letter, let me clarify a point about "promotion headroom associated with the position to which I was assigned." In point of fact, <sup>supplanted</sup> ~~headroom~~ or <sup>assigned</sup> ceiling is disposed by the Congress and the Office of Management and Budget, <sup>whereas</sup> positions are established by the Agency's Office of Personnel. Thus when <sup>small</sup> ceiling

*reduced*  
is ~~lowered~~, for example, the Agency finds itself with a discrepancy-- more positions than ceiling. The point is that, necessarily, not all GS-15's in GS-16 positions have associated headroom; and the available headroom is gained not as a function of being in a position, but by competition. As noted, management of that headroom and the competition for it is handled at the directorate and Agency level, not by office component. It is wide of the mark, therefore, for you to have felt you or OC somehow 'owned' headroom associated with your position.

*hasn't happened to date*  
6. As for personal rank assignments (PRA's), you should understand that when they occur they occur for good reason. For example, when Congress or OMB ~~lowers~~ *reduces* the Agency ceiling, PRA's may be forced; downgrading of positions by the Office of Personnel may have the same result; similarly, the assignment of an individual to a position of lower grade where his talents are needed. While the "promotion of someone serving in a lesser-graded position" does occur, as you write, such promotions come only by competition and according to the criteria stated above. Nor, in looking at such competition, would I suggest that the edge should always go to GS-15's in GS-16 positions over those in GS-15 ones. In reviewing records of the Directorate for Administration on this point, incidentally, I note that of 22 individuals whom SPRB recommended for promotion to GS-16 in 1976 and 1977, only 2 were PRA's. The Agency monitors PRA assignments carefully according to Headquarters Regulation [REDACTED] which is classified but available here for your review should you desire.

7. As a matter of law, the general rule is that promotions may not be made retroactively in the absence of express statutory authority. The exception to this rule is where administrative error has deprived an employee of a right granted by statute or regulation or has resulted in a failure to carry out nondiscretionary administrative regulations or policies. These exceptional conditions do not exist here.

8. I find that normal administrative procedures were properly carried out in considering you for promotion and accordingly conclude that your claim for promotion retroactive to May 1976 is not valid.

Frank C. Carlucci